

Peer Review Agreement
between Dover, Portsmouth, Rochester, NH (the "cities")
and
the Department of Environmental Services (DES)

1. The Peer Review shall be of the New Hampshire DES Great Bay Nutrient Criteria Proposal dated 2009.
2. Within 60 days, DES and the cities will jointly decide the method by which to select peer reviewers, consistent with accepted guidelines for avoiding undue bias or direct/indirect economic interest in the outcome.
3. Within 90 days, DES and the cities will select three independent peer reviewers. Those reviewers selected must be able to complete their review and issue their report or reports within 5 months of receipt of the parties' written submissions. The reviewers must have demonstrated expertise on nutrient fate and transport in aquatic systems, with particular expertise on estuarine systems, as well as accepted methodologies of environmental data assessment. The parties agree to mediate any issues involving selection of the peer review panel. The cost of such mediation shall be covered by the cities. DES will not subpoena or sue the peer reviewers in connection with the review.
4. Within 120 days, DES and the cities will propose charge questions to submit to the peer reviewers, and attempt to reach agreement on the same. If the parties are unable to reach agreement on appropriate charge questions to the peer reviewers, then a total of ten questions (five from DES and five from the cities) will be submitted and the peer reviewers will address each of the questions presented.
5. The peer review will be conducted in general compliance with the EPA Handbook subject to whatever modifications may be agreed to by the parties and peer review panel. In general, it is contemplated that the process will consist of written submissions to the peer review panel and a public comment period. Written comments will be accepted throughout the comment period. DES will provide all of the underlying data and analyses to the reviewers immediately upon selection of the panel. At the discretion of the panel, a public meeting may be convened in Concord, NH for the parties to respond to questions from the panel. The meeting, if one is convened, shall be open to the public. Appropriate notice of the time and place of the meeting shall be published pursuant to RSA 91-A:2.
6. The cities will pay all fees charged by the peer reviewers. The parties will otherwise bear their own costs associated with participation in the peer review.
7. If the parties agree on an alternate approach, this agreement and the peer review process may be set aside.

CITY OF PORTSMOUTH

By and through its attorneys,

NELSON KINDER + MOSSEAU PC

Dated: 4/1/13

By: 

E. Tupper Kinder (N.H. Bar # 1369)
99 Middle Street
Manchester, NH 03101
(603) 647-1800

CITY OF DOVER

By and through its attorneys,

**SHEEHAN PHINNEY BASS + GREEN,
PROFESSIONAL ASSOCIATION**

Dated: 3/29/13

By: 

John E. Peltonen (N.H. Bar # 1994)
Robert R. Lucic (N.H. Bar # 9062)
Courtney H.G. Herz (N.H. Bar # 17114)
1000 Elm Street
P. O. Box 3701
Manchester, NH 03105-3701
(603) 627-8291

CITY OF ROCHESTER

By and through its attorneys,

RATH YOUNG AND PIGNATELLI, P.C.

Dated: 3/28/13

By: 

Sherilyn Burner Young (N.H. Bar # 2700)
One Capital Plaza
Concord, NH 03302
(603) 226-2600

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

Dated: 4/29/2013

By: Thomas L. Benack
Name
Commissioner
Title

Dierker, Carl

From: Pincumbe, David
Sent: Tuesday, June 18, 2013 9:41 AM
To: DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Perkins, Stephen; Bukhari, Samir
Cc: Dierker, Carl
Subject: RE: background for Curt
Attachments: Background for Great Bay Meeting on 6 21 13.docx

Looks good to me. One minor edit.

From: DeLoi, Carl
Sent: Tuesday, June 18, 2013 9:25 AM
To: Pitt, Brian; Pincumbe, David; Arsenault, Dan; Perkins, Stephen; Bukhari, Samir
Cc: Dierker, Carl
Subject: background for Curt

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Chief, Wetlands & Information Branch
Office of Ecosystem Protection
Environmental Protection Agency, Region 1
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Boston, Massachusetts 02109-3912
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Background for Great Bay Meeting on 6/21/13

The three Great Bay cities of Portsmouth, Dover and Rochester recently signed an MOA with the NH DES wherein the parties agreed to try and reach consensus on the scope of a proposed peer review of a 2009 report prepared by the NH DES that identifies acceptable total nitrogen levels in the estuary as 0.3mg/l. The MOA also allows for an alternative course of action in which the cities would conduct monitoring and modeling of the Piscataqua and Cocheco rivers to estimate the total nitrogen contribution of the cities to Great Bay and Little Bay proper.

The meeting on the 21st and the list of questions (attached) provided by the cities is presumed to aide them in making a decision on which course of action to pursue. The three cities have major differences including their discharge locations, treatment facilities and places in the regulatory process.

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Arsenault, Dan

From: DeLoi, Carl
Sent: Wednesday, May 08, 2013 2:31 PM
To: Perkins, Stephen; Pitt, Brian; Bukhari, Samir; Arsenault, Dan; Pincumbe, David
Subject: FW: MOA
Attachments: 4677_001.pdf

-----Original Message-----

From: Peter Wellenberger [<mailto:PWellenberger@clf.org>]
Sent: Tuesday, April 30, 2013 10:28 AM
To: DeLoi, Carl
Subject: FW: MOA

FYI

Peter Wellenberger
Great Bay-Piscataqua WATERKEEPER
CLF New Hampshire

PO Box 277
Durham, NH 03824

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For a thriving New England

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Dated: 4/29/2013

By: Thomas A. Zimach
Name
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Pincumbe, David

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By: Thomas H. Benack
Name
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Pincumbe, David

From: Pincumbe, David
Sent: Wednesday, May 08, 2013 2:54 PM
To: DeLoi, Carl
Subject: RE: MOA
Attachments: PeerreviewNH.docx

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From: DeLoi, Carl
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To: Perkins, Stephen; Pitt, Brian; Bukhari, Samir; Arsenault, Dan; Pincumbe, David
Subject: FW: MOA

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For a thriving New England

Pincumbe, David

From: Pincumbe, David
Sent: Thursday, June 06, 2013 8:58 AM
To: Perkins, Stephen; Pitt, Brian; Arsenault, Dan; DeLoi, Carl
Subject: FW: MOA
Attachments: PeerreviewNH.docx

These are what I identified as some of the key requirements of the EPA Peer Review guidance.

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Sent: Wednesday, May 08, 2013 2:54 PM
To: DeLoi, Carl
Subject: RE: MOA

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From: DeLoi, Carl
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As part of each peer review, the Peer Review Leader must formulate a clear, focused charge that identifies recognized issues and invites comments or assistance.

If you obtain stakeholder input, you must include any and all interested parties to the extent feasible based upon statutory, regulatory, budgetary and/or time constraints. Do not limit input to one stakeholder only (e.g., a responsible party or environmental group).

b) If EPA has hired a contractor

Selection of independent peer reviewers is not a trivial task, and it is crucial to an effective peer review. It is important that peer reviewers be selected for independence and scientific/technical expertise. Therefore, EPA should always make every effort to use peer reviewers who do not have any real or perceived bias or conflict of interest and who are completely independent.

The matter of obtaining a fair and credible peer review, as well as maintaining the credibility of the Agency and the Agency's scientific products, is of paramount importance. Peer review leaders are strongly encouraged to obtain peer reviewers who do not have a legal or perceived conflict of interest (i.e., creates the appearance that the peer reviewer lacks impartiality or objectivity). In reality, we recognize that a totally independent peer reviewer is rare and very difficult to identify (see Section 3.4.6 for steps to take to ensure a credible peer review).

Conflict of interest is a situation in which, because of other activities or relationships with other persons, an individual is unable or potentially unable to render impartial assistance or advice to the Agency, or the person's objectivity in performing the work is or might be otherwise impaired, or a person has an unfair competitive advantage. Generally, a conflict of interest arises when the person is affected by his/her private interests, when he/she or his/her associates would derive benefit from incorporation of their point of view in an Agency product, or when their professional standing and status or the significance of their principal area of work might be affected by the outcome of the peer review.

Before finalizing the selection of reviewers, the Peer Review Leader should ascertain whether each potential peer reviewer's involvement in certain activities could pose a conflict of interest (COI) or create the appearance that the peer reviewer lacks impartiality. One way of identifying conflicts is to ask potential reviewers about current and prior work, and prior clients that might create conflicts or the appearance of a lack of impartiality in carrying out peer review activities.

Pincumbe, David

From: Diers, Ted [Ted.Diers@des.nh.gov]
Sent: Thursday, June 13, 2013 3:43 PM
To: Arsenault, Dan
Cc: Pitt, Brian; Pincumbe, David
Subject: RE: Coalition Q's
Attachments: DRAFT QUESTIONS FOR EPA1.doc

Hey Guys,

I think this is the final version but I haven't heard back. If it changes I'll send the updated version.

Ted

Ted Diers
Watershed Management Bureau
Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095

603-271-3289

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by law or regulation. If you are not the intended recipient or the person responsible for delivering the e-mail for the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you believe that you have received this e-mail in error, please notify me at the Department of Environmental Services at (603) 271-3289.

From: Arsenault, Dan [mailto:Arseault.Dan@epa.gov]
Sent: Thu 6/13/2013 2:51 PM
To: Diers, Ted
Cc: Pitt, Brian; Pincumbe, David
Subject: Coalition Q's

Hey Ted:

Good talking to you. When you send the Q's down please send them to Dave Pincumbe and Brian Pitt as well.

Thanks,

DRAFT QUESTIONS FOR EPA

1. To what extent are the Dover draft permit, and the future Portsmouth and Rochester permits, based on the water quality of the receiving water (Cocheco and Piscataqua Rivers) versus the conditions in Great Bay and Little Bay?
 - a. Is there a level of nutrient loading from Rochester, Dover and Portsmouth to Great Bay and Little Bay that EPA would consider "de minimis" in influencing nutrient effluent limits? If so, would the range of 5-10% cumulative loading (or 1-2 % individual loading) be considered "de minimis"?
 - b. If the loading from Dover, Rochester and Portsmouth, individually or collectively, are considered significant (more than de minimis) to Little Bay and/or Great Bay, does EPA view its Taunton decision as a precedent that would support a modified methodology, based on dilution, for identifying and approving less stringent nitrogen effluent limits for Dover, Rochester and Portsmouth?
2. If the DES and cities were to engage in an effort to create a site specific nutrient criteria or loading or other approaches for the Cocheco and Piscataqua Rivers, would that influence the eventual permit limits (assuming that the water bodies remain impaired for TN)?
 - a. Does EPA agree that it is appropriate to apply different water quality criteria to determine impairments in the Cocheco and Piscataqua Rivers from the criteria used in Great Bay and Little Bay? This is asked recognizing the differences in macroalgae, eelgrass and DO concerns in these waters relative to Great Bay and Little Bay.
 - b. The draft Taunton WWTF permit (# MA 0100897), for which the public comment period just ended, is of interest given that it is the most recent draft NPDES with nitrogen limits in the region. In the Taunton permit, the fact sheet states that Massachusetts considers nitrogen levels in the range of .30 to .39 mg/L TN to represent "good to excellent" water quality and .39 to .50 TN with Chlorophyll-a ranging from 3-5 ug/l to represent "unimpaired" water quality (Taunton Fact Sheet, p.18). The Piscataqua already meets these target levels. Would EPA accept these target levels ranging from 0.39- 0.50 mg/l TN for the Cocheco and Piscataqua Rivers? Can you please describe the similarities and differences between the Taunton and Great Bay Estuary situations?
 - c. Would EPA accept methods for determining water quality impairments that allow TN concentrations higher than 0.3 mg/l?
3. What is the timeframe for the release of the EPA collected data from 2012?
4. Given the agreement of DES and the Coalition to proceed with a peer review, will EPA agree to defer any further permitting decisions in the Estuary until after the peer review is completed (completion expected in January 2014) and consider the peer review report in any future permitting decisions.

Pincumbe, David

From: Pincumbe, David
Sent: Tuesday, June 18, 2013 9:25 AM
To: DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Bukhari, Samir
Subject: talking points
Attachments: GreatBayMtgTalkingPoints.doc.docx

Here is a one pager with draft talking points for the questions that have been provided to us.

What are the receiving waters of concern for the Dover draft permit and future Portsmouth and Rochester permits?

- The Dover draft permit is based on Upper Piscataqua River impacts and the Rochester future permit will be based on Cocheco River and Upper Piscataqua River impacts.

The Portsmouth permit will be based on achieving standards in the Lower Piscataqua River and will also be consistent with the NHDES Nitrogen Load Reduction Report for achieving standards in Great Bay/Little Bay and the Upper Piscataqua River.

Is there a level of nutrient loading from Rochester, Dover, and Portsmouth to Great Bay/Little Bay that EPA would consider de minimis?

- Great Bay/Little Bay is not the only focus of these permits. EPA has not established a de minimis load level and such a determination would not be appropriate where significant non-point source reductions are necessary in addition to point source reductions.

Would site specific nutrient criteria or loading influence permit limits?

- A site specific nitrogen criteria that is developed and subsequently approved by both NHDES and EPA would be used in future permit decisions.
- Any credible new scientific information on nitrogen impairments or reductions necessary to comply with water quality standards will be considered by EPA in future permit decisions.

Does EPA agree that it is appropriate to apply different water quality criteria to determine impairments in the Cocheco and Piscataqua Rivers from the criteria used in Great Bay and Little Bay?

- Based on the available scientific information EPA believes that the nitrogen thresholds developed by NHDES are appropriate for the entire Great Bay Estuary.

Would EPA accept the MassDEP target levels of 0.39 - 0.5 mg/l?

- No. The MA target levels are literature based target values as opposed to site specific values. These values are not used by MassDEP in their nitrogen allocations for estuaries but are replaced by site specific referenced based values.
- The MassDEP report clearly identifies the levels necessary for protection of eelgrass habitat as <0.39 and ideally < 0.3 mg/l. This is consistent with the reference based analysis included as part of the weight of evidence approach used to develop the NHDES target values.

Will EPA delay further permitting decisions pending completion of further peer review and consider the peer review in future permitting decisions?

- Given the lengthy delays that have already occurred, EPA will not further delay permitting actions pending the results of another peer review. However, we do not envision any further permitting actions until later this year and we will take into consideration any new information that becomes available to us.

Pincumbe, David

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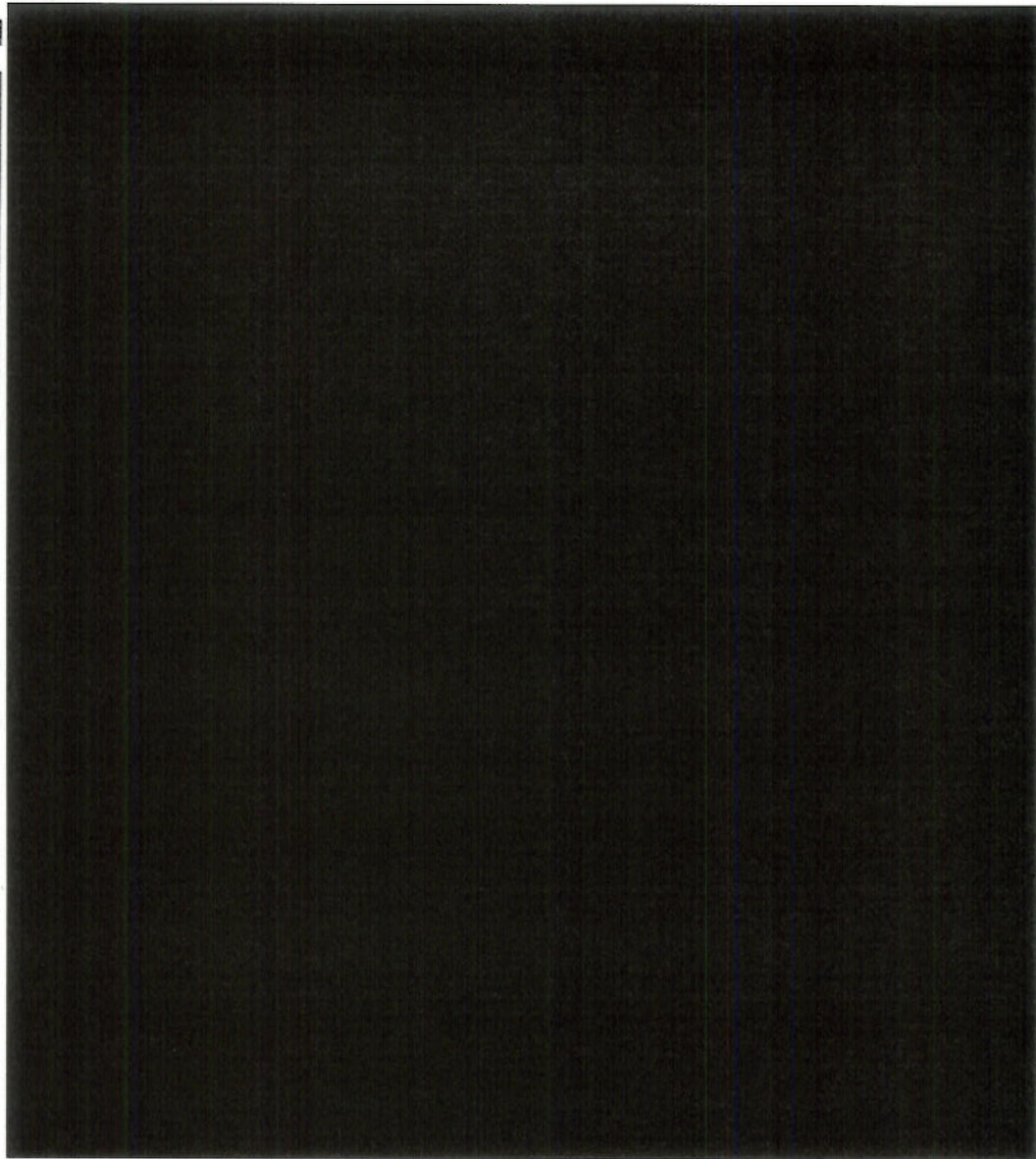
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Will EPA delay further permitting decisions pending completion of further peer review and consider the peer review in future permitting decisions?

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Pincumbe, David

From: Perkins, Stephen
Sent: Tuesday, June 18, 2013 12:06 PM
To: Pincumbe, David; DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Bukhari, Samir
Subject: RE: background for Curt
Attachments: Background for Great Bay Meeting on 6 21 13 (2) sp.docx

I added a couple of tiny edits to dave's version.

Thanks. Stephen

From: Pincumbe, David
Sent: Tuesday, June 18, 2013 9:41 AM
To: DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Perkins, Stephen; Bukhari, Samir
Cc: Dierker, Carl
Subject: RE: background for Curt

Looks good to me. One minor edit.

From: DeLoi, Carl
Sent: Tuesday, June 18, 2013 9:25 AM
To: Pitt, Brian; Pincumbe, David; Arsenault, Dan; Perkins, Stephen; Bukhari, Samir
Cc: Dierker, Carl
Subject: background for Curt

Here's a first cut on some background on the cities. Dave is working on talking points. Please send me any edits on this piece.....c

Carl R. DeLoi
Chief, Wetlands & Information Branch
Office of Ecosystem Protection
Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
(617) 918-1581
Deloi.Carl @ EPA .GOV

Background for Great Bay Meeting on 6/21/13

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The meeting on the 21st and the list of questions (attached) provided by the cities is presumed to ~~aid~~ help them in making a decision on which course of action to pursue. The three cities have major differences including their discharge locations, treatment facilities and places in the regulatory process.

Comment [sp1]: Presume you mean help or assist.

Portsmouth: Under court order to build a secondary treatment plant. The proposed design, which has been approved by the City Council, is expected to easily meet 8mg/l or better total nitrogen. The city has not yet received a draft discharge permit but EPA has indicated in writing to Portsmouth that their proposed limit is likely to be 8 mg/l. The Portsmouth discharge at the mouth of the Piscataqua enjoys a great deal of dilution but a significant fraction of the discharge makes its way up into Great Bay/Little Bay and the Upper Piscataqua River, the estuary. Also, while the water quality impairments are not as severe, there are concerns with the current nitrogen levels in the Lower Piscataqua River which receives the Portsmouth discharge directly.

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Pitt, Brian

From: Pincumbe, David
Sent: Thursday, June 06, 2013 8:58 AM
To: Perkins, Stephen; Pitt, Brian; Arsenault, Dan; DeLoi, Carl
Subject: FW: MOA
Attachments: PeerreviewNH.docx

These are what I identified as some of the key requirements of the EPA Peer Review guidance.

-----Original Message-----

From: Pincumbe, David
Sent: Wednesday, May 08, 2013 2:54 PM
To: DeLoi, Carl
Subject: RE: MOA

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From: DeLoi, Carl
Sent: Wednesday, May 08, 2013 2:31 PM
To: Perkins, Stephen; Pitt, Brian; Bukhari, Samir; Arsenault, Dan; Pincumbe, David
Subject: FW: MOA

-----Original Message-----

From: Peter Wellenberger [<mailto:PWellenberger@clf.org>]
Sent: Tuesday, April 30, 2013 10:28 AM
To: DeLoi, Carl
Subject: FW: MOA

FYI

Peter Wellenberger
Great Bay-Piscataqua WATERKEEPER
CLF New Hampshire

PO Box 277
Durham, NH 03824

P: 603.225-3060 x 3016
P: 631.747.8630 Cell
E: pwellenberger@clf.org
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For a thriving New England

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If you obtain stakeholder input, you must include any and all interested parties to the extent feasible based upon statutory, regulatory, budgetary and/or time constraints. Do not limit input to one stakeholder only (e.g., a responsible party or environmental group).

b) If EPA has hired a contractor

Selection of independent peer reviewers is not a trivial task, and it is crucial to an effective peer review. It is important that peer reviewers be selected for independence and scientific/technical expertise. Therefore, EPA should always make every effort to use peer reviewers who do not have any real or perceived bias or conflict of interest and who are completely independent.

The matter of obtaining a fair and credible peer review, as well as maintaining the credibility of the Agency and the Agency's scientific products, is of paramount importance. Peer review leaders are strongly encouraged to obtain peer reviewers who do not have a legal or perceived conflict of interest (i.e., creates the appearance that the peer reviewer lacks impartiality or objectivity). In reality, we recognize that a totally independent peer reviewer is rare and very difficult to identify (see Section 3.4.6 for steps to take to ensure a credible peer review).

Conflict of interest is a situation in which, because of other activities or relationships with other persons, an individual is unable or potentially unable to render impartial assistance or advice to the Agency, or the person's objectivity in performing the work is or might be otherwise impaired, or a person has an unfair competitive advantage. Generally, a conflict of interest arises when the person is affected by his/her private interests, when he/she or his/her associates would derive benefit from incorporation of their point of view in an Agency product, or when their professional standing and status or the significance of their principal area of work might be affected by the outcome of the peer review.

Before finalizing the selection of reviewers, the Peer Review Leader should ascertain whether each potential peer reviewer's involvement in certain activities could pose a conflict of interest (COI) or create the appearance that the peer reviewer lacks impartiality. One way of identifying conflicts is to ask potential reviewers about current and prior work, and prior clients that might create conflicts or the appearance of a lack of impartiality in carrying out peer review activities.

Pitt, Brian

From: DeLoi, Carl
Sent: Friday, March 29, 2013 2:26 PM
To: Perkins, Stephen; Pitt, Brian; Pincumbe, David; Arsenault, Dan; Bukhari, Samir
Subject: FW: sb110
Attachments: Talking points for Senator Watters.doc

Looks like peer review of the 2009 report is off the table for now. We will need to talk further with NHDES on what happens next.....c

From: Diers, Ted [<mailto:Ted.Diers@des.nh.gov>]
Sent: Friday, March 29, 2013 2:15 PM
To: DeLoi, Carl
Subject: sb110

The senate voted to rerefer the bill, so it will not move onto the house this session.

Attached are some comments for Sen. Watters.

Let me know if you want more of an update.

Ted Diers, Administrator
Watershed Management Bureau
NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Phone - 603-271-3289
Fax - 603-271-7894
[Watershed Management Bureau website](#)

Talking points for Senator Watters

The intention of proposing SB110 was to get the cities of Portsmouth, Rochester and Dover and the Department of Environmental Services to work together to solve the problems associated with the Great Bay Estuary. I am pleased to report that great progress is underway on that account. Back on February 20, the entire DES senior leadership team met in a working session with the Dover City Council. For the better part of 2 hours, the councilors expressed their concerns and had a frank discussion with the Commissioner about the potential impacts of EPA permits on their community. DES listened carefully and presented a number of ways in which the community and DES could work together improve the scientific understanding of the condition of the Estuary.

At the hearing of SB110, Senator Bradley asked the three cities and DES to try to come to an agreement on a peer review. At his behest, the city leadership met with DES leadership and attempted to hammer out an agreement. Sufficient progress has been made such that the committee felt that the bill could be rereferred to allow the communities and DES more time to come to agreement.

The Commissioner has now discussed an alternative approach with the cities that could solve some of their concerns. Recognizing that new data are available and a likely recommendation from a peer review would be to look specifically at the conditions of the Cocheco and Piscataqua Rivers as separate from the Great Bay itself, DES suggested that it is time to move forward with updating the assessment of nutrients and thresholds in the tidal Cocheco and Piscataqua Rivers. DES and the cities met again this week and discussed that money spent on hiring mutually agreeable experts to review the new data available, and utilize the existing and new data to develop site specific water quality objectives for the rivers could be a more constructive and beneficial use of scarce resources.

This collaborative process would start with a mediated forum to discuss new information generated since 2009. At this meeting, the parties could also discuss the goals for an update of the 2009 report and a long-term program for additional collaborative monitoring, modeling, and analysis.

The cities and DES could then task a mutually agreed upon consultant to review the new data and develop a scope of work for development of site specific criteria. Creation of the scope of work would benefit from input from the public and other scientists. It could also include development of long term monitoring and modeling programs, and other agreed upon longer term endpoints.

The DES and Communities are very close to agreement on ways to move forward. I recommend that the full senate vote with the committee recommendation to rerefer the bill. The committee will have the ability to oversee the progress and report back to the general court.

Pitt, Brian

From: DeLoi, Carl
Sent: Wednesday, May 08, 2013 2:31 PM
To: Perkins, Stephen; Pitt, Brian; Bukhari, Samir; Arsenault, Dan; Pincumbe, David
Subject: FW: MOA
Attachments: 4677_001.pdf

-----Original Message-----

From: Peter Wellenberger [<mailto:PWellenberger@clf.org>]
Sent: Tuesday, April 30, 2013 10:28 AM
To: DeLoi, Carl
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www.clf.org/greatbaywaterkeeper

For a thriving New England

Peer Review Agreement
between Dover, Portsmouth, Rochester, NH (the "cities")
and
the Department of Environmental Services (DES)

1. The Peer Review shall be of the New Hampshire DES Great Bay Nutrient Criteria Proposal dated 2009.
2. Within 60 days, DES and the cities will jointly decide the method by which to select peer reviewers, consistent with accepted guidelines for avoiding undue bias or direct/indirect economic interest in the outcome.
3. Within 90 days, DES and the cities will select three independent peer reviewers. Those reviewers selected must be able to complete their review and issue their report or reports within 5 months of receipt of the parties' written submissions. The reviewers must have demonstrated expertise on nutrient fate and transport in aquatic systems, with particular expertise on estuarine systems, as well as accepted methodologies of environmental data assessment. The parties agree to mediate any issues involving selection of the peer review panel. The cost of such mediation shall be covered by the cities. DES will not subpoena or sue the peer reviewers in connection with the review.
4. Within 120 days, DES and the cities will propose charge questions to submit to the peer reviewers, and attempt to reach agreement on the same. If the parties are unable to reach agreement on appropriate charge questions to the peer reviewers, then a total of ten questions (five from DES and five from the cities) will be submitted and the peer reviewers will address each of the questions presented.
5. The peer review will be conducted in general compliance with the EPA Handbook subject to whatever modifications may be agreed to by the parties and peer review panel. In general, it is contemplated that the process will consist of written submissions to the peer review panel and a public comment period. Written comments will be accepted throughout the comment period. DES will provide all of the underlying data and analyses to the reviewers immediately upon selection of the panel. At the discretion of the panel, a public meeting may be convened in Concord, NH for the parties to respond to questions from the panel. The meeting, if one is convened, shall be open to the public. Appropriate notice of the time and place of the meeting shall be published pursuant to RSA 91-A:2.
6. The cities will pay all fees charged by the peer reviewers. The parties will otherwise bear their own costs associated with participation in the peer review.
7. If the parties agree on an alternate approach, this agreement and the peer review process may be set aside.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

Dated: 4/29/2013

By: Thomas A. Benack
Name
Commissioner
Title

Pincumbe, David

From: Pincumbe, David
Sent: Tuesday, June 18, 2013 2:24 PM
To: DeLoi, Carl
Subject: talking points
Attachments: GreatBayMtgTalkingPoints doc (sb).docx

Added Samir's opening statement [REDACTED] left his warnings for Curt at the bottom of the talking points. If this looks good you can go ahead and distribute it to the team and Curt.

Opening Statement:

As you know, the Great Bay Municipal Coalition, or its constituent communities, are actively pursuing litigation before the U.S. Environmental Appeals Board and in federal court over nutrient-related issues in Great Bay. Unfortunately, our discussions will be limited in certain areas at this time due to the pending litigation.

Questions Posed to EPA:

What are the receiving waters of concern for the Dover draft permit and future Portsmouth and Rochester permits?

- The Dover draft permit is based on Upper Piscataqua River impacts and the Rochester future permit will be based on Cocheco River and Upper Piscataqua River impacts.

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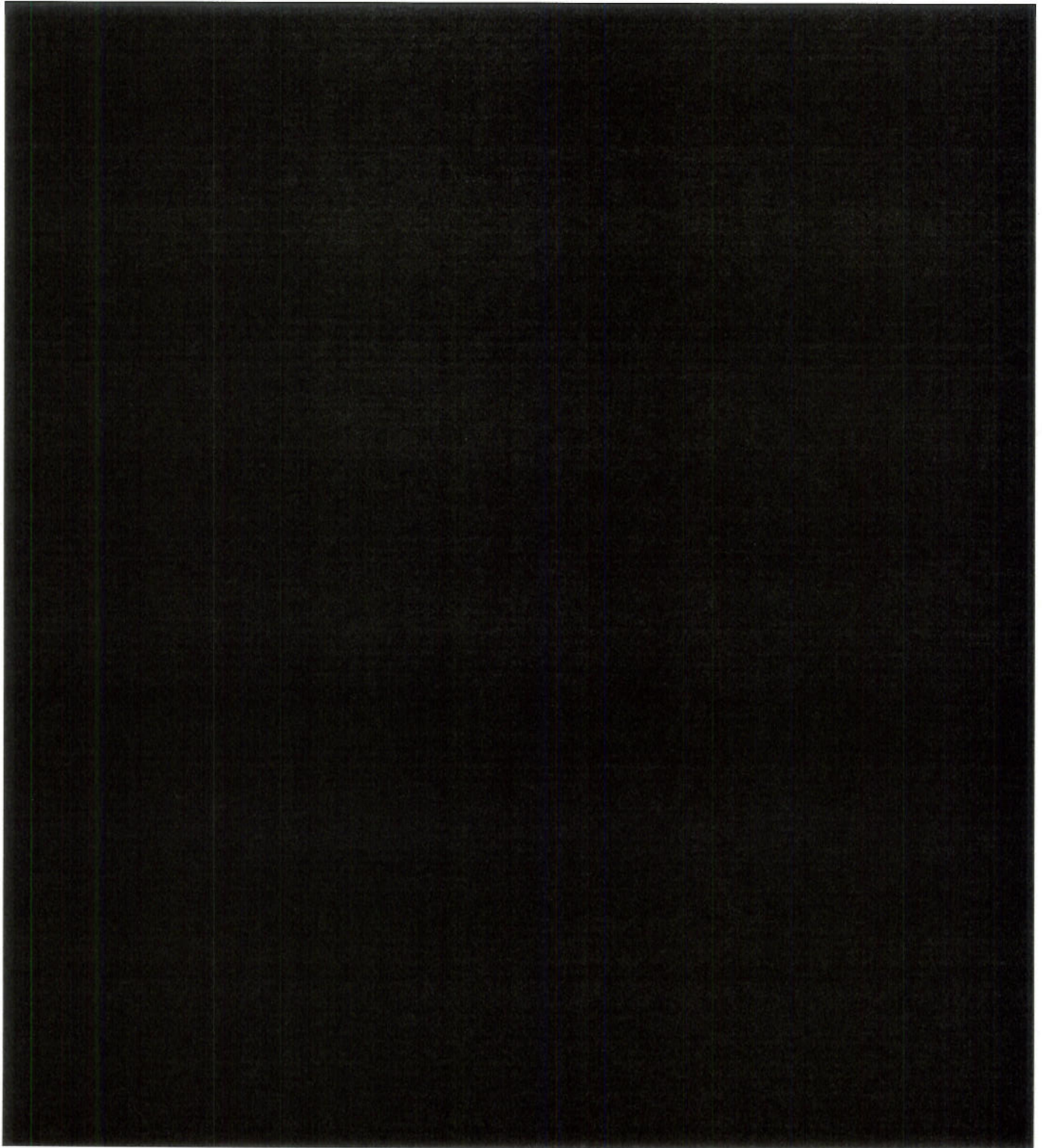
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Pincumbe, David

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Sent: Tuesday, June 18, 2013 2:27 PM
To: DeLoi, Carl
Attachments: Background for Great Bay Meeting on 6 21 13 (2) sp.docx

Background with Stephen's and my edits.

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From: Perkins, Stephen
Sent: Tuesday, June 18, 2013 2:53 PM
To: Pincumbe, David
Cc: DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Bukhari, Samir
Subject: RE: talking points
Attachments: GreatBayMtgTalkingPoints doc sp.docx

Looks pretty good. See comments in attached.
Thanks. Stephen

From: Pincumbe, David
Sent: Tuesday, June 18, 2013 9:42 AM
To: Perkins, Stephen
Subject: FW: talking points

Forgot to include you.

From: Pincumbe, David
Sent: Tuesday, June 18, 2013 9:25 AM
To: DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Bukhari, Samir
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Here is a one pager with draft talking points for the questions that have been provided to us.

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Would site specific nutrient criteria or loading influence permit limits?

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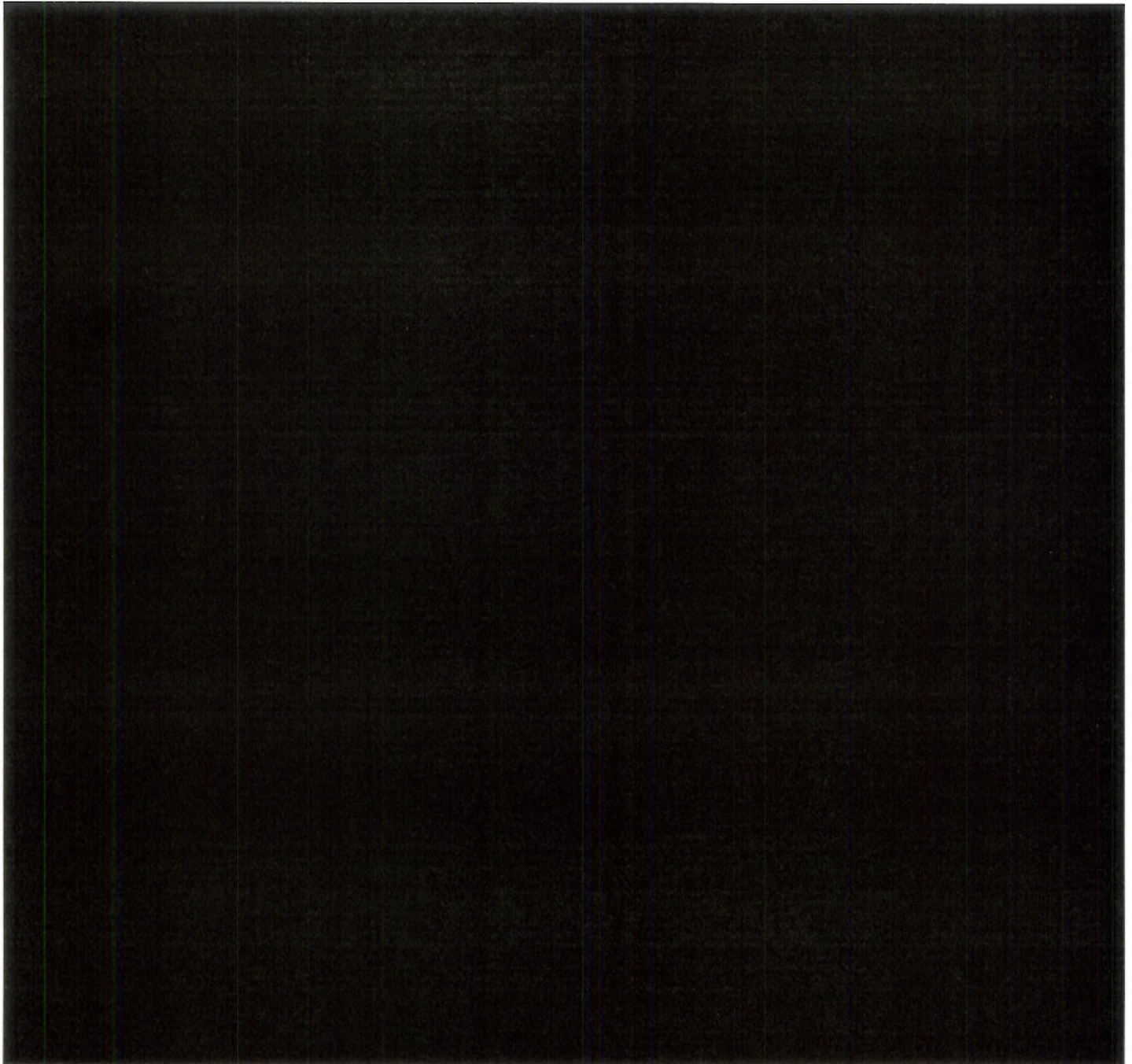
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[REDACTED] w [REDACTED]
[REDACTED]
[REDACTED]

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Subject: FW: sb110
Attachments: Talking points for Senator Watters.doc

Looks like peer review of the 2009 report is off the table for now. We will need to talk further with NHDES on what happens next.....c

From: Diers, Ted [<mailto:Ted.Diers@des.nh.gov>]
Sent: Friday, March 29, 2013 2:15 PM
To: DeLoi, Carl
Subject: sb110

The senate voted to rerefer the bill, so it will not move onto the house this session.

Attached are some comments for Sen. Watters.

Let me know if you want more of an update.

Ted Diers, Administrator
Watershed Management Bureau
NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Phone - 603-271-3289
Fax - 603-271-7894
[Watershed Management Bureau website](#)

Talking points for Senator Watters

The intention of proposing SB110 was to get the cities of Portsmouth, Rochester and Dover and the Department of Environmental Services to work together to solve the problems associated with the Great Bay Estuary. I am pleased to report that great progress is underway on that account. Back on February 20, the entire DES senior leadership team met in a working session with the Dover City Council. For the better part of 2 hours, the councilors expressed their concerns and had a frank discussion with the Commissioner about the potential impacts of EPA permits on their community. DES listened carefully and presented a number of ways in which the community and DES could work together improve the scientific understanding of the condition of the Estuary.

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The DES and Communities are very close to agreement on ways to move forward. I recommend that the full senate vote with the committee recommendation to rerefer the bill. The committee will have the ability to oversee the progress and report back to the general court.

Pitt, Brian

From: DeLoi, Carl
Sent: Wednesday, May 08, 2013 2:31 PM
To: Perkins, Stephen; Pitt, Brian; Bukhari, Samir; Arsenault, Dan; Pincumbe, David
Subject: FW: MOA
Attachments: 4677_001.pdf

-----Original Message-----

From: Peter Wellenberger [<mailto:PWellenberger@clf.org>]
Sent: Tuesday, April 30, 2013 10:28 AM
To: DeLoi, Carl
Subject: FW: MOA

FYI

Peter Wellenberger
Great Bay-Piscataqua WATERKEEPER
CLF New Hampshire

PO Box 277
Durham, NH 03824

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For a thriving New England

**Peer Review Agreement
between Dover, Portsmouth, Rochester, NH (the "cities")
and
the Department of Environmental Services (DES)**

1. The Peer Review shall be of the New Hampshire DES Great Bay Nutrient Criteria Proposal dated 2009.
2. Within 60 days, DES and the cities will jointly decide the method by which to select peer reviewers, consistent with accepted guidelines for avoiding undue bias or direct/indirect economic interest in the outcome.
3. Within 90 days, DES and the cities will select three independent peer reviewers. Those reviewers selected must be able to complete their review and issue their report or reports within 5 months of receipt of the parties' written submissions. The reviewers must have demonstrated expertise on nutrient fate and transport in aquatic systems, with particular expertise on estuarine systems, as well as accepted methodologies of environmental data assessment. The parties agree to mediate any issues involving selection of the peer review panel. The cost of such mediation shall be covered by the cities. DES will not subpoena or sue the peer reviewers in connection with the review.
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STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

Dated: 4/29/2013

By: Thomas A. Zwick
Name
Commissioner
Title

Arsenault, Dan

From: DeLoi, Carl
Sent: Tuesday, June 18, 2013 9:25 AM
To: Pitt, Brian; Pincumbe, David; Arsenault, Dan; Perkins, Stephen; Bukhari, Samir
Cc: Dierker, Carl
Subject: background for Curt
Attachments: Background for Great Bay Meeting on 6.21.13.docx

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Carl R. DeLoi
Chief, Wetlands & Information Branch
Office of Ecosystem Protection
Environmental Protection Agency , Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
(617) 918-1581
Deloi.Carl @ EPA .GOV

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Subject: FW: MOA
Attachments: 4677_001.pdf

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

Dated: 4/29/2013

By: Thomas A. Benack
Name
Commissioner
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From: DeLoi, Carl
Sent: Friday, March 29, 2013 2:26 PM
To: Perkins, Stephen; Pitt, Brian; Pincumbe, David; Arsenault, Dan; Bukhari, Samir
Subject: FW: sb110
Attachments: Talking points for Senator Watters.doc

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Arsenault, Dan

From: Pincumbe, David
Sent: Thursday, June 06, 2013 8:58 AM
To: Perkins, Stephen; Pitt, Brian; Arsenault, Dan; DeLoi, Carl
Subject: FW: MOA
Attachments: PeerreviewNH.docx

These are what I identified as some of the key requirements of the EPA Peer Review guidance.

-----Original Message-----

From: Pincumbe, David
Sent: Wednesday, May 08, 2013 2:54 PM
To: DeLoi, Carl
Subject: RE: MOA

-----Original Message-----

From: DeLoi, Carl
Sent: Wednesday, May 08, 2013 2:31 PM
To: Perkins, Stephen; Pitt, Brian; Bukhari, Samir; Arsenault, Dan; Pincumbe, David
Subject: FW: MOA

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From: Peter Wellenberger [<mailto:PWellenberger@clf.org>]
Sent: Tuesday, April 30, 2013 10:28 AM
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For a thriving New England

As part of each peer review, the Peer Review Leader must formulate a clear, focused charge that identifies recognized issues and invites comments or assistance.

If you obtain stakeholder input, you must include any and all interested parties to the extent feasible based upon statutory, regulatory, budgetary and/or time constraints. Do not limit input to one stakeholder only (e.g., a responsible party or environmental group).

b) If EPA has hired a contractor

Selection of independent peer reviewers is not a trivial task, and it is crucial to an effective peer review. It is important that peer reviewers be selected for independence and scientific/technical expertise. Therefore, EPA should always make every effort to use peer reviewers who do not have any real or perceived bias or conflict of interest and who are completely independent.

The matter of obtaining a fair and credible peer review, as well as maintaining the credibility of the Agency and the Agency's scientific products, is of paramount importance. Peer review leaders are strongly encouraged to obtain peer reviewers who do not have a legal or perceived conflict of interest (i.e., creates the appearance that the peer reviewer lacks impartiality or objectivity). In reality, we recognize that a totally independent peer reviewer is rare and very difficult to identify (see Section 3.4.6 for steps to take to ensure a credible peer review).

Conflict of interest is a situation in which, because of other activities or relationships with other persons, an individual is unable or potentially unable to render impartial assistance or advice to the Agency, or the person's objectivity in performing the work is or might be otherwise impaired, or a person has an unfair competitive advantage. Generally, a conflict of interest arises when the person is affected by his/her private interests, when he/she or his/her associates would derive benefit from incorporation of their point of view in an Agency product, or when their professional standing and status or the significance of their principal area of work might be affected by the outcome of the peer review.

Before finalizing the selection of reviewers, the Peer Review Leader should ascertain whether each potential peer reviewer's involvement in certain activities could pose a conflict of interest (COI) or create the appearance that the peer reviewer lacks impartiality. One way of identifying conflicts is to ask potential reviewers about current and prior work, and prior clients that might create conflicts or the appearance of a lack of impartiality in carrying out peer review activities.

Arsenault, Dan

From: Perkins, Stephen
Sent: Tuesday, June 18, 2013 12:06 PM
To: Pincumbe, David; DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Bukhari, Samir
Subject: RE: background for Curt
Attachments: Background for Great Bay Meeting on 6 21 13 (2) sp.docx

I added a couple of tiny edits to dave's version.

Thanks. Stephen

From: Pincumbe, David
Sent: Tuesday, June 18, 2013 9:41 AM
To: DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Perkins, Stephen; Bukhari, Samir
Cc: Dierker, Carl
Subject: RE: background for Curt

Looks good to me. One minor edit.

From: DeLoi, Carl
Sent: Tuesday, June 18, 2013 9:25 AM
To: Pitt, Brian; Pincumbe, David; Arsenault, Dan; Perkins, Stephen; Bukhari, Samir
Cc: Dierker, Carl
Subject: background for Curt

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Carl R. DeLoi
Chief, Wetlands & Information Branch
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Environmental Protection Agency, Region 1
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Deloi.Carl @ EPA .GOV

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Comment [sp1]: Presume you mean help or assist.

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Arsenault, Dan

From: Perkins, Stephen
Sent: Tuesday, June 18, 2013 2:53 PM
To: Pincumbe, David
Cc: DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Bukhari, Samir
Subject: RE: talking points
Attachments: GreatBayMtgTalkingPoints doc sp.docx

Looks pretty good. See comments in attached.
Thanks. Stephen

From: Pincumbe, David
Sent: Tuesday, June 18, 2013 9:42 AM
To: Perkins, Stephen
Subject: FW: talking points

Forgot to include you.

From: Pincumbe, David
Sent: Tuesday, June 18, 2013 9:25 AM
To: DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Bukhari, Samir
Subject: talking points

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- The Dover draft permit is based on Upper Piscataqua River impacts and the Rochester future permit will be based on Cocheco River and Upper Piscataqua River impacts.

The Portsmouth permit will be based on achieving standards in the Lower Piscataqua River and will also be consistent with the NHDES Nitrogen Load Reduction Report for achieving standards in Great Bay/Little Bay and the Upper Piscataqua River.

Is there a level of nutrient loading from Rochester, Dover, and Portsmouth to Great Bay/Little Bay that EPA would consider de minimis?

- Great Bay/Little Bay is not the only focus of these permits. EPA has not established a de minimis load level and such a determination would not be appropriate where significant non-point source reductions are necessary in addition to point source reductions.

Would site specific nutrient criteria or loading influence permit limits?

- A site specific nitrogen criteria that is developed and subsequently approved by both NHDES and EPA would be used in future permit decisions.
- Any credible new scientific information on nitrogen impairments or reductions necessary to comply with water quality standards will be considered by EPA in future permit decisions.

Does EPA agree that it is appropriate to apply different water quality criteria to determine impairments in the Cocheco and Piscataqua Rivers from the criteria used in Great Bay and Little Bay?

- Based on the available scientific information EPA believes that the nitrogen thresholds developed by NHDES are appropriate for the entire Great Bay Estuary.

Would EPA accept the MassDEP target levels of 0.39 - 0.5 mg/l?

- No. The MA target levels are literature based target values as opposed to site specific values. These values are not used by MassDEP in their nitrogen allocations for estuaries but are replaced by site specific referenced based values.
- The MassDEP report clearly identifies the levels necessary for protection of eelgrass habitat as <0.39 and ideally < 0.3 mg/l. This is consistent with the reference based analysis included as part of the weight of evidence approach used to develop the NHDES target values.

Will EPA delay further permitting decisions pending completion of further peer review and consider the peer review in future permitting decisions?

- Given the lengthy delays that have already occurred, EPA will not further delay permitting actions pending the results of another peer review. However, we do not envision any further permitting actions until later this year and we will take into consideration any new information that becomes available to us.

Arsenault, Dan

From: Pitt, Brian
Sent: Thursday, April 25, 2013 2:18 PM
To: Arsenault, Dan; DeLoi, Carl
Subject: RE: GB permit status for Curt
Attachments: Great Bay Permit Status - April 2013bp.docx

Looks good. A couple additional thoughts...

From: Arsenault, Dan
Sent: Thursday, April 25, 2013 2:04 PM
To: Pitt, Brian; DeLoi, Carl
Subject: GB permit status for Curt

Attached is a short summary of the status for Exeter, Newmarket, Dover, Portsmouth, and Rochester.

Let me know if you want me to track down any other info.

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- The MassDEP report clearly identifies the levels necessary for protection of eelgrass habitat as <0.39 and ideally < 0.3 mg/l. This is consistent with the reference based analysis included as part of the weight of evidence approach used to develop the NHDES target values.

Will EPA delay further permitting decisions pending completion of further peer review and consider the peer review in future permitting decisions?

- Given the lengthy delays that have already occurred, EPA will not further delay permitting actions pending the results of another peer review. However, we do not envision any further permitting actions until later this year and we will take into consideration any new information that becomes available to us.

Bukhari, Samir

From: Bukhari, Samir
Sent: Tuesday, June 18, 2013 11:41 AM
To: Pincumbe, David; DeLoi, Carl; Pitt, Brian; Arsenault, Dan
Cc: Dierker, Carl
Subject: RE: talking points
Attachments: GreatBayMtgTalkingPoints doc (sb).docx

Looks good. [REDACTED]

From: Pincumbe, David
Sent: Tuesday, June 18, 2013 9:25 AM
To: DeLoi, Carl; Pitt, Brian; Arsenault, Dan; Bukhari, Samir
Subject: talking points

Here is a one pager with draft talking points for the questions that have been provided to us.

What are the receiving waters of concern for the Dover draft permit and future Portsmouth and Rochester permits?

- The Dover draft permit is based on Upper Piscataqua River impacts and the Rochester future permit will be based on Cocheco River and Upper Piscataqua River impacts.

The Portsmouth permit will be based on achieving standards in the Lower Piscataqua River and will also be consistent with the NHDES Nitrogen Load Reduction Report for achieving standards in Great Bay/Little Bay and the Upper Piscataqua River.

Is there a level of nutrient loading from Rochester, Dover, and Portsmouth to Great Bay/Little Bay that EPA would consider de minimis?

- There is no "de minimis" exception under the Clean Water Act. In any case, Great Bay/Little Bay is not the only focus of these permits. EPA has not established a de minimis load level and such a determination would not be appropriate, especially where significant non-point source reductions are necessary in addition to point source reductions.

Would site specific nutrient criteria or loading influence permit limits?

- A site specific nitrogen criteria that is developed and subsequently approved by both NHDES and EPA would be used in future permit decisions.
- Any credible new scientific information on nitrogen impairments or reductions necessary to comply with water quality standards will be considered by EPA in future permit decisions.

Does EPA agree that it is appropriate to apply different water quality criteria to determine impairments in the Cocheco and Piscataqua Rivers from the criteria used in Great Bay and Little Bay?

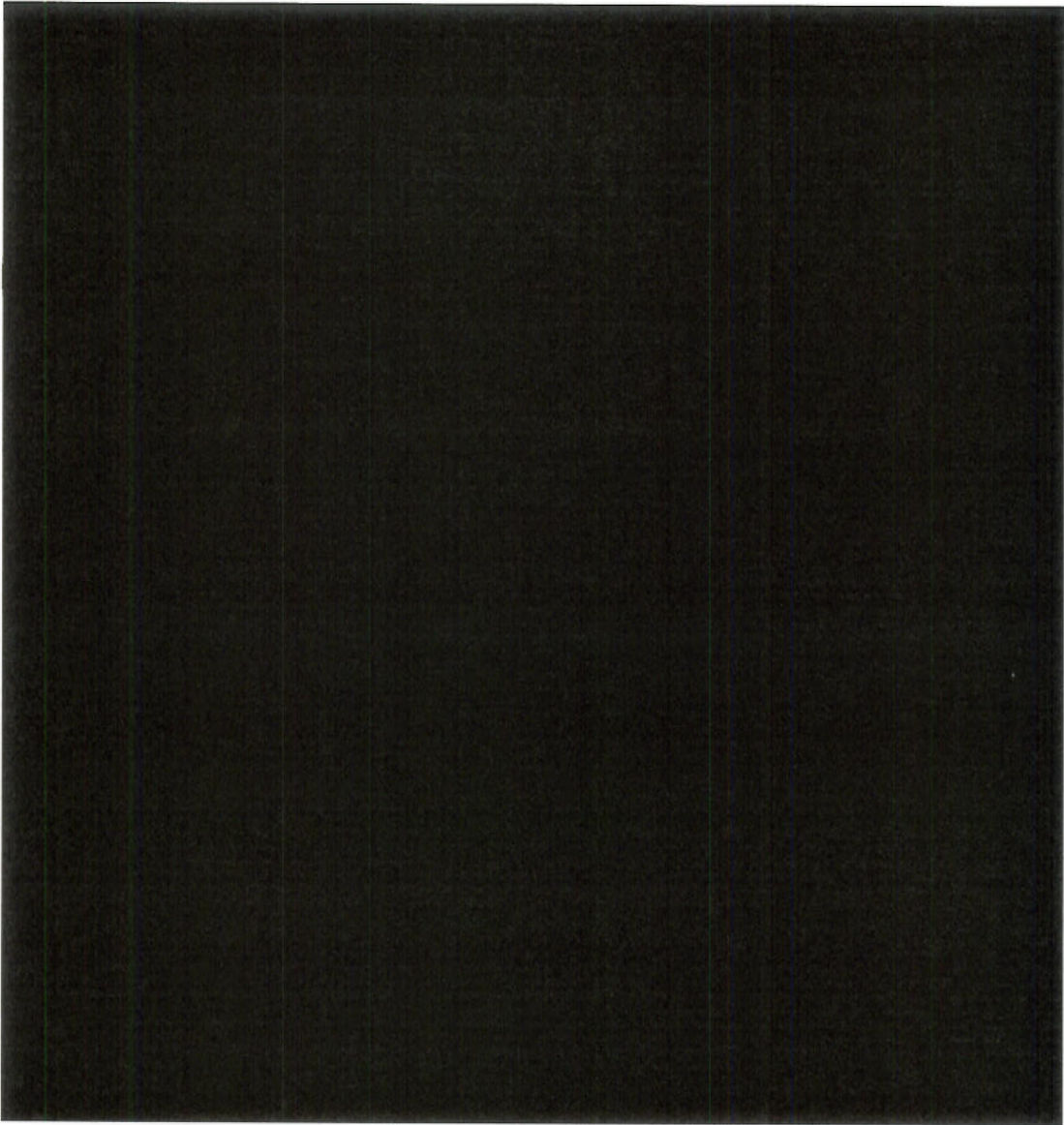
- Based on the available scientific information EPA believes that the nitrogen thresholds developed by NHDES are appropriate for the entire Great Bay Estuary.

Would EPA accept the MassDEP target levels of 0.39 - 0.5 mg/l?

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Bukhari, Samir

From: Stewart, Harry [Harry.Stewart@des.nh.gov]
Sent: Thursday, June 20, 2013 1:44 PM
To: DeLoi, Carl; Bukhari, Samir
Cc: crdeloi@gmail.gov
Subject: FW: Peer Review Agreement
Attachments: 4677_001.pdf

Samir and Carl,

Per Carl's request, attached is a copy of the agreement between DES and the Coalition.
This version copy does not have the municipal signatures. I'll send one if/when I find it.
Note that I'm pretty sure that this is the final language because I believe that Tom Burack only signed one version.

Thanks,
Harry

Peer Review Agreement
between Dover, Portsmouth, Rochester, NH (the "cities")
and
the Department of Environmental Services (DES)

1. The Peer Review shall be of the New Hampshire DES Great Bay Nutrient Criteria Proposal dated 2009.
2. Within 60 days, DES and the cities will jointly decide the method by which to select peer reviewers, consistent with accepted guidelines for avoiding undue bias or direct/indirect economic interest in the outcome.
3. Within 90 days, DES and the cities will select three independent peer reviewers. Those reviewers selected must be able to complete their review and issue their report or reports within 5 months of receipt of the parties' written submissions. The reviewers must have demonstrated expertise on nutrient fate and transport in aquatic systems, with particular expertise on estuarine systems, as well as accepted methodologies of environmental data assessment. The parties agree to mediate any issues involving selection of the peer review panel. The cost of such mediation shall be covered by the cities. DES will not subpoena or sue the peer reviewers in connection with the review.
4. Within 120 days, DES and the cities will propose charge questions to submit to the peer reviewers, and attempt to reach agreement on the same. If the parties are unable to reach agreement on appropriate charge questions to the peer reviewers, then a total of ten questions (five from DES and five from the cities) will be submitted and the peer reviewers will address each of the questions presented.
5. The peer review will be conducted in general compliance with the EPA Handbook subject to whatever modifications may be agreed to by the parties and peer review panel. In general, it is contemplated that the process will consist of written submissions to the peer review panel and a public comment period. Written comments will be accepted throughout the comment period. DES will provide all of the underlying data and analyses to the reviewers immediately upon selection of the panel. At the discretion of the panel, a public meeting may be convened in Concord, NH for the parties to respond to questions from the panel. The meeting, if one is convened, shall be open to the public. Appropriate notice of the time and place of the meeting shall be published pursuant to RSA 91-A:2.
6. The cities will pay all fees charged by the peer reviewers. The parties will otherwise bear their own costs associated with participation in the peer review.
7. If the parties agree on an alternate approach, this agreement and the peer review process may be set aside.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL
SERVICES

Dated: 4/29/2013

By: Thomas A. Benack
Name
Commissioner
Title